IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2006

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION No.35477 of 2006

& MP.NOS.1 AND 2 OF 2006

M/s.Kathiravan Pipes Pvt.Ltd.,
rep.by its Managing Director
M.Kathiravan
..Petitioner

Vs

1.The Customs, Excise and Service
Tax Appellate Tribunal, South
Zonal Bench, I Floor, Annexe
Building, Shastri Bhavan, NO.26,
Haddows Road, Chennai-6.

2.The Commissioner of Central Excise
(Appeals), NO.1, Foulks Compound
Anai Medu, Salem-1.

3.The Commissioner of Central Excise
NO.1, Foulks Compound, Anai Medu
Salem-1.
..Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records comprised in Final Order NO.738/2006 dated 14.8.2006 passed in E/Appeal NO.301/2006 on the file of the first respondent confirming the order passed by the second respondent comprised in Order in Appeal No.14/2006-CE (SLM) dated 19.1.2006, quash the same and consequently direct the second respondent to hear and decide the appeal on merits at an early date.

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For Petitioner : Mr.G.RM.Palaniappan

For Respondents : Mr.P.Wilson, Assistant Solicitor General.

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O R D E R

The writ petition has been filed questioning the correctness of the order passed by the Tribunal in Final Order No.738 of 2006 dated 14.8.2006 in E/Appeal NO.301/ 2006 whereby the order passed by the second respondent dated 19.1.2006 non-suiting the petitioner for condoning the delay of 25 days in filing the appeal has been confirmed.

2. The reason stated by the Tribunal was that the delay was sought to be explained by the petitioner by submitting that one Mr.Kathiravan, the Managing Director of the company was under medical treatment for 10 days from 7.11.2005, that the medical certificate would be produced at the time of hearing and that however no such certificate was produced by the petitioner before the second respondent. On that reason, the second respondent had refused to condone the delay in filing the appeal. The Tribunal further found that the petitioner produced a medical certificate dated 17.11.2005 where-under it was certified that Mr.Kathiravan was suffering from viral fever and was advised to rest from 7.11.2005 to 17.11.2005. The said certificate was for the period from 7.11.2005 to 17.11.2005 and the delay for the subsequent period has not been explained by the petitioner is the reason given by the Tribunal for non-suiting the petitioner for condoning the delay.

3. I have heard learned counsel on either side and perused the materials on record.

4. I am of the view that the literal interpretation given on the certificate that the petitioner was advised to rest from 7.11.2005 to 17.11.2005 cannot be legally an appreciable finding. It is the opinion of the doctor that the petitioner was required to take rest for that period. That does not mean that on the expiry of the last date mentioned in the medical certificate, the person, who suffered certain viral infection, has immediately got rejuvenated with full rigour and has to attend all his office work.

5. It is well settled principle of law that the technicalities and substantial justice are pitted against each other and the Courts would always lean in favour of substantial justice rather than technicalities for non-suiting the petitioner on the ground that the appeal has not been filed within the time stipulated in spite of the fact that the authorities are conferred with the power to condone the delay. Likewise, the limitation prescribed is not for destruction of statutory right and is only to give finality without protracting the matter endlessly.

6. Here is the case where the petitioner sought for condoning the delay 25 days and a part of which has been explained by producing the medical certificate. Hence, this Court is of the view that the second respondent ought to have condoned the delay and allowed the petitioner to

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have their case decided on merits. But, that course has not been adopted and the order of the second respondent has also been confirmed by the Tribunal. This Court is of the view that the orders of respondents 1 and 2 are to be set aside and the delay in filing the appeal can be condoned.

7. Accordingly, the orders of respondents 1 and 2 are set aside. The delay in filing the appeal is condoned. The second respondent is directed to number, take the appeal on file and decide the issue on merits by following due process of law. The writ petition is allowed. No costs. Consequently, the above MPS are dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, I Floor, Annexe Building, Shastri Bhavan, NO.26, Haddows Road, Chennai-6.

2.The Commissioner of Central Excise (Appeals), NO.1, Foulks Compound, Anai Medu, Salem-1.

3.The Commissioner of Central Excise, NO.1, Foulks Compound, Anai Medu, Salem-1.

1 cc To Mr.K.Ramakrishna Reddy, Advocate, SR.50088.
1 cc To Mr.G.RM.Palaniappan, Advocate, SR.50250.

RS

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MP.Nos.1 AND 2 Of 2006

JE(CO)
RVL 08.11.2006

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